

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

HORUS VISION, LLC, a California limited liability company,

Plaintiff,

v.

APPLIED BALLISTICS, LLC, a Michigan limited liability company, and APPLIED BALLISTICS, INC., an Indiana corporation,

Defendants.

Case No. 5:13-cv-05460-BLF-HRL

**ORDER GRANTING MOTION FOR  
LEAVE TO AMEND PLAINTIFF'S  
INFRINGEMENT CONTENTIONS AND  
DENYING AS MOOT MOTION TO  
APPEAR BY TELEPHONE**

[Re: Dkt. Nos. 32, 41]

Plaintiff's motion for leave to amend infringement contentions has been referred to the undersigned for disposition.<sup>1</sup> This patent infringement suit relates to a method of aiming a firearm with a scope using a computer program. Plaintiff Horus Vision, LLC ("Horus") seeks leave to amend its infringement contentions to include an explicit list of reticles<sup>2</sup> that Horus believes infringes its patent when used with two of defendants' software programs. Dkt. No. 32.

Horus's original infringement contentions, served April 2, 2014, accused two Applied Ballistics software programs of infringement when used with "a target acquisition device such as a

<sup>1</sup> The court deems this motion suitable for a decision on the papers. Civ. L. R. 7-1(b). Accordingly, Horus's motion to appear at the hearing by telephone, Dkt. No. 41, is denied as moot.

<sup>2</sup> Horus explains (colloquially, not for purposes of claim construction), that a reticle is a "series of markings, like gridlines, in the eyepiece of a rifle scope that help the viewer reference the field of view seen when looking through the rifle scope." Dkt. No. 32 at 2.

Horus Vision rifle scope.” Dkt. No. 32-2 at 3, 10. Horus’s proposed amended contentions, served April 22, 2014, list 88 possible reticles for use with Applied Ballistics’ accused programs. Dkt. No. 32-5 at 10.

Patent Local Rule 3-6 allows the parties to amend their infringement contentions only “by order of the Court upon a timely showing of good cause.”

Horus has good cause to amend its infringement contentions because the amendments do not change the theory of infringement and simplify issues for trial. As Horus repeatedly emphasizes in its brief, the Applied Ballistics software products being accused remain the same, and the use of different reticles or scopes with the Applied Ballistics software is likely to involve overlapping factual and legal issues.

Although it does appear that Horus could have listed all 88 reticles in its original contentions, suggesting a lack of diligence, Applied Ballistics is not prejudiced by the amendment because it is early in the case and the amendments were proposed less than 3 weeks after service of the original preliminary infringement contentions. The amendment was also made in response to Applied Ballistics’ concerns about the original contentions, Dkt. No. 32 at 6, although that is not to say that Applied Ballistics invited or consented to Horus’s expanded list of reticles.

In the end, Applied Ballistics has suffered no prejudice from the 20-day difference in infringement contentions, and Horus’s amended infringement contentions contain the same theory of infringement, only laid out in more explicit detail,<sup>3</sup> than the original preliminary infringement contentions. Allowing Horus to amend its infringement contentions does not conflict with the central purpose of the Local Rule—to “require parties to crystallize their theories of the case early in litigation and to adhere to those theories once they have been disclosed.” *O2 Micro Int’l Ltd. v. Monolithic Power Sys., Inc.*, 467 F.3d 1355, 1366 n. 12 (Fed. Cir. 2006). Accordingly, the court GRANTS the motion for leave to amend.

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<sup>3</sup> The court expresses no opinion on the adequacy of the amended infringement contentions, which Applied Ballistics suggests are lacking. *See, e.g.*, Dkt. No. 36 at 13.

United States District Court  
Northern District of California

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SO ORDERED.

Dated: June 23, 2014

  
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HOWARD R. LOYD  
UNITED STATES MAGISTRATE JUDGE